



ATTORNEYS AT LAW
123 MAIN STREET – 9TH FLOOR
WHITE PLAINS, NEW YORK 10601
www.canterlawfirm.com

Nelson E. Canter*
John D. Megerian**
*Also admitted in New Jersey
** Also admitted in Connecticut

TEL: (914) 948-3011
FAX: (914) 948-3066
ncanter@canterlawfirm.com

November 22, 2010

Via ECF

Honorable Madeline C. Arleo, U.S.M.J.
United States District Court
District of New Jersey
M.L. King, Jr. Building & U.S. Courthouse
50 Walnut Street
Newark, NJ 07101

Re: BanxCorp v. Bankrate, Inc., Civ. No.: 07-03398-SDW-MCA

Dear Judge Arleo:

We represent Plaintiff BanxCorp in the above-referenced matter and for the reasons outlined below, we respectfully submit this status report following an unsuccessful and contentious meet and confer held by the parties on November 19, 2010.¹

Unfortunately, the issues raised in Plaintiff's letters to the Court dated October 21, November 10 and 15, 2010 remain unresolved, as follows:

1. Plaintiff requests that Defendant remove the AEO and Confidential designations from all co-branding contracts, including Bankaholic and LendingTree, schedules and exhibits to acquisition agreements of MMIS/Interest.com and Bankaholic, and co-branding revenue allocation and traffic reports, for the reasons set forth in Plaintiff's letters to the Court dated November 10 and 15, 2010. Defendant Bankrate opposes this request.
2. Plaintiff requests that Defendant amend section A of its Rule 26(e) disclosure with respect to "Persons Likely To Have Discoverable Information That Bankrate May Use to Support Its Defenses," by actually disclosing the name, title and contact information of "all persons identified as counterparties on contracts." This mandatory disclosure may not be circumvented by mere reference to thousands of nonpublic documents improperly

¹ Regretfully under the circumstances any effort to draft a timely Joint Status Letter became moot due to Defendant's unreasonable and uncompromising stance. Either way, the end result would have been one and the same: Defendant refuses to resolve any of the disputed issues, or to even propose alternative dates for depositions.

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designated as AEO or Confidential, for the reasons set forth in Plaintiff's letter to the Court dated November 15, 2010. Defendant Bankrate opposes this request.

3. Plaintiff requests modification of the existing Discovery Confidentiality Order, for use of discovery materials in any related action; including any action or investigation pursued by federal and state law enforcement agencies, as set forth in its letters to the Court dated November 10 and 15, 2010. Defendant Bankrate opposes this request.
4. Plaintiff requests modification of paragraph 6 of the Court's October 6, 2010 Pretrial Scheduling Order, so as to have the right to "move for summary judgment at any time until 30 days after the close of all discovery,"² as set forth in Plaintiff's letters to the Court dated November 10 and 15, 2010, and "to secure the just, speedy and inexpensive determination of every action."³ Defendant Bankrate opposes this request.
5. Plaintiff served Notices of Deposition of Peter Morse⁴ and Mitch Truwit⁵ on October 20, 2010 and served a Deposition Subpoena on nonparty witness Elisabeth DeMarse⁶ on October 26, 2010. These depositions are scheduled to take place in Courtroom 2A on November 29th and 30th and Plaintiff intends to proceed accordingly, as set forth in its letters to the Court dated October 21 and November 15, 2010. Defendant Bankrate opposes these depositions.

In light of the foregoing, Plaintiff respectfully seeks the Court's intervention so that we may advance this and the related actions accordingly.

Thank you for your cooperation in this matter.

Respectfully submitted,



Nelson E. Canter

cc. R. Scott Thompson, Esq. (via ECF)
Michael J. Hahn, Esq. (via ECF)

² See FRCP Rule 56(c)(A).

³ See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

⁴ Peter Morse has been Bankrate's chairman since 1997, and is the alleged cartel's mastermind.

⁵ Mitch Truwit has been Bankrate's director since 2009, upon its acquisition by Apax Partners.

⁶ Elisabeth DeMarse is the former CEO of Bankrate, and also served as CEO of CreditCards.com until its acquisition by Bankrate with the support of Apax Partners, on or about July 2010.